

Chapter 77

Paternity

77.1. Purpose and Policy

77.2. Adoption, Amendment, Repeal, Other Laws and Agency Rules

77.3. Definitions

77.4. Jurisdiction

77.5. Paternity - Generally

77.6. Establishing Paternity Through Order of the Commission

77.7. Paternity Established by Other Jurisdictions

77.1. Purpose and Policy

77.1-1. *Purpose.* The purpose of this law is to establish paternity of Oneida children and other Indian children in order to protect the best interest of these children regarding such matters as enrollment, customs and traditions of the Tribe, survivorship and inheritance, health, support, and social security benefits.

77.1-2. *Policy.* It is the policy of this law to legally establish paternity in order to recognize and identify the father of Oneida children and other Indian children, when necessary.

77.2. Adoption, Amendment, Repeal, Other Laws and Agency Rules

77.2-1. This law is adopted by the Oneida Business Committee by resolution BC-06-24-09-C and amended by resolution BC-02-24-10-F and BC-02-23-11-E.

77.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

77.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

77.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

77.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

77.2-6. Any Agency requirements which would affect individuals outside the Agency and do not relate to the internal management of the Agency shall require Oneida Business Committee approval in the form of a law or rule.

77.3. Definitions

77.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Agency" shall mean the Oneida Child Support Enforcement Agency.

(b) "Child" shall mean a person under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.

(c) "Commission" shall mean the Oneida Tribal Judicial system, known as the Oneida Appeals Commission, which is the judicial arm of the Tribe.

(d) "Legally Incompetent Adult" shall mean a person at least eighteen (18) years old who has been declared incompetent by a court of competent jurisdiction because he or she is temporarily or permanently impaired to the extent that the person lacks sufficient

understanding to make or communicate responsible personal decisions.

(e) "Reservation" shall mean all lands within the Oneida Indian Reservation of Wisconsin as established by the Treaty with the Oneida, 1838.

(f) "Tribe" or "Tribal" shall mean the Oneida Tribe of Indians of Wisconsin.

77.4. Jurisdiction

77.4-1. The Commission has jurisdiction over any action brought under this law. Personal jurisdiction over an individual under this law may be established where the parties are any of the following:

(a) a member of the Tribe; or

(b) a resident of the Reservation who is also a member of an Indian tribe, band or community which is recognized by a State or the federal government; or

(c) a resident of the Reservation who is also the biological parent of a child that is enrolled or is eligible for enrollment with the Tribe; or

(d) an individual who consents to the jurisdiction of the Commission by one (1) of the following:

(1) Filing an action with the Commission.

(2) Knowingly and voluntarily giving written consent to the jurisdiction of the Commission.

(3) Entering a notice of appearance before the Commission in an action without concurrently preserving the defense of lack of personal jurisdiction or filing a motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering the notice of appearance.

(4) Appearing in an action before the Commission without asserting the defense of lack of personal jurisdiction.

77.4-2. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been established under 77.4-1, the Commission has jurisdiction over any action transferred to the Commission from any court of competent jurisdiction.

77.5. Paternity - Generally

77.5-1. The paternity proceedings in this law may be used in a variety of circumstances where paternity has not been established. Establishment of paternity is generally a contested process or it may be used if an alleged father is deceased.

77.5-2. A man is presumed to be the natural father of a child if he and the natural mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated. The presumption can only be overcome by clear and convincing evidence.

77.6. Establishing Paternity Through Order of the Commission

77.6-1. A child, a child's legal guardian, a child's natural mother, the Agency when required by federal law, or a child's alleged father may file a petition requesting the Commission to establish paternity. The Agency may assist a party who is filing a petition to establish the paternity of a child. The natural mother and an alleged father may file jointly.

(a) If a party to the action is a minor or is a legally incompetent adult, the Commission may appoint a guardian ad litem to represent such party in the action, in accordance with section 79.8 of the Child Custody, Placement and Visitation law. A guardian ad litem

may also file a petition requesting the Commission to establish paternity.

77.6-2. *Petition.* A petition to establish paternity shall include the following:

- (a) The names, dates of birth, addresses and tribal affiliations, if any, of the natural mother, the alleged father(s), and of anyone who has legal rights of custody, visitation or support of the child;
- (b) The marital status of the natural mother and the alleged father(s);
- (c) Whether any party has filed an action to determine paternity in another court, or with any agency, and if a judgment of paternity has been rendered by any other court;
- (d) The notarized signature of the petitioner verifying the truth of the information in the petition; and
- (e) A separate form which has the parties' and the child's name, date of birth, and social security number. A certified copy of the child's birth certificate shall also be attached to the form as a supporting document. This form shall be kept separate from the petition and shall be maintained in a confidential file. The form shall be available only to the parties, their attorneys, the Agency or any person authorized by the Commission to have access to the form.

77.6-3. *Notice.* All parties, including the natural mother and the alleged father(s), shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard.

77.6-4. *Summons.* The summons to be served on the alleged father(s), along with the petition, shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

- (a) You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support and make your failure to pay child support punishable as contempt.
- (b) You may request genetic tests which will indicate the probability that you are the father of the child. The Commission will order genetic tests on request by you, a designated Tribal agency or any other party to the case. Any person who refuses to take ordered genetic tests may be punished for contempt.
- (c) The petitioner has the burden of proving by clear and convincing evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of your being the father is ninety-nine percent (99.0%) or higher, you are rebuttably presumed to be the father.
- (d) The following defenses are available to you:
 - (1) That you were sterile or impotent at the time of conception;
 - (2) That you did not have sexual intercourse with the mother of the child during the conception period; or
 - (3) That another man did have sexual intercourse with the mother of the child during the conception period.
- (e) If you fail to appear at any stage of the proceedings, including a scheduled genetic test, the Commission may enter a default judgment finding you to be the father. A default judgment will take effect twenty-eight (28) days after it is served on or mailed to you by registered mail (return receipt requested), unless within those twenty-eight (28) days you present yourself to the Commission and establish good cause for your failure to appear or present yourself for the genetic test.

77.6-5. *Hearing.* The following rules apply to paternity hearings:

- (a) The mother of the child and the alleged father(s) may be compelled to testify.
- (b) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
- (c) The hearing shall be conducted by the Commission.

77.6-6. *Genetic Tests.*

- (a) If the alleged father(s) is alive and available, the Commission may require the child, mother, and alleged father(s) to submit to genetic tests, unless it would not be in the best interest of the child, as determined under 77.6-8.
- (b) If genetic material is available, without undue hardship, from a deceased alleged father or a relative of the deceased alleged father in an action under this law, genetic tests shall be conducted on that material. There is a rebuttable presumption that exhumation of a deceased alleged father to obtain genetic material is an undue hardship.
- (c) An alleged father may be excused from the requirement of genetic tests if the Commission determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.
- (d) If genetic testing is required by the Commission, such testing shall be performed by an expert in paternity genetic testing approved by the Commission. The Commission shall order either the Agency or one or both parties to pay for the cost of a genetic test, based on whether the parties have sufficient resources to pay for the costs of the test.
- (e) Genetic testing shall be required in all contested cases.

77.6-7. *Evidence.* The Commission may consider the following types of evidence in paternity cases:

- (a) Genetic test results, presented by either expert testimony or a written report and accompanied by an affidavit, provided that the results of all tests when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-nine percent (99.0%) that the alleged father is the natural father;
- (b) Evidence of sexual intercourse between the mother and an alleged father at any possible time of conception;
- (c) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;
- (d) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Commission and performed by experts; or
- (e) Any other reliable evidence which is relevant to the issue of paternity of the child.

77.6-8. *Best Interest of the Child Not to Establish Paternity.* The Commission may determine that it is not in the best interest of the child to establish paternity if:

- (a) the child was conceived as the result of rape, incest, sexual abuse of a minor, or sexual assault; or
- (b) the cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

77.6-9. *Judgment of Paternity.* A judgment or order determining the paternity of the child shall contain an adjudication of the paternity of the child and may contain:

- (a) An order for the legal custody of and periods of physical placement with the child, determined in accordance with applicable law.
- (b) An order requiring either or both parents to contribute to the support and/or health care expenses of the child, determined in accordance with applicable law.

(c) An order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half (1/2) of the total actual and reasonable pregnancy and birth expenses. The order shall specify the court's findings as to whether the father's income is at or below the poverty line established under 42 USC 9902(2), and shall specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses.

77.6-10. *Judgment of Paternity and Birth Certificate.* If the judgment or order of the Commission is different from the child's birth certificate, the Agency shall send the order to the appropriate records office of the state in which the child was born.

77.6-11. *Default and Stipulated Judgments.*

(a) Judgment When Petitioner Fails to Appear or Unable to Proceed. If a petitioner, other than the Agency, fails to appear on the date set for the for the hearing or if the Agency is the petitioner and is unable to proceed on the date set for the hearing, the Commission may enter a judgment for the respondent dismissing the action, on the motion of the respondent or upon its own motion.

(1) Judgment When Mother Fails to Appear. Notwithstanding (a), the Commission may enter an order adjudicating the alleged father, or male alleging that he is the father, to be the father of the child if the mother of the child fails to appear at the hearing or scheduled genetic test if sufficient evidence exists to establish the male as the father of the child.

(b) Judgment When the Respondent Fails to Appear. If a respondent is the alleged father and fails to appear at a hearing or scheduled ordered genetic test, the Commission shall enter an order adjudicating the respondent to be the father. The order shall be either served on the respondent or mailed, by registered or certified mail, to the last known address of the respondent. Such order shall take effect twenty-eight (28) days after service unless, within that time, the respondent presents to the Commission evidence of good cause for his failure to appear or to undergo a genetic test.

(1) A default judgment may not be entered if there is more than one (1) person alleged in the petition to be the father, unless any of the following applies:

(i) Only one (1) of those persons fails to appear and all of the other male respondents have been excluded as the father.

(ii) The alleged father who fails to appear has had genetic tests under 77.6-6 showing that the alleged father is not excluded and that the statistical probability of the alleged father's parentage is 99.0 percent or higher.

(c) Judgment Upon Stipulation. At any time after service of the summons and petition, a respondent who is the alleged father may, with or without appearance before the Commission and subject to the approval of the Commission, acknowledge, in writing, that he has read and understands the notice under 77.6-4 and stipulate that he is the father of the child.

(1) The Commission shall not approve a stipulation from an alleged father who is a minor.

(2) If the Commission approves the stipulation, the Commission shall enter an order adjudicating the respondent to be the father. The order shall either be served on the respondent or mailed by registered or certified mail to the last known address of the respondent. The orders shall take effect upon entry if the respondent has so

stipulated. If the respondent has not so stipulated, the orders shall take effect twenty-eight (28) days after service or twenty-eight (28) days after the date on which the orders were mailed unless, within that time, the respondent presents to the Commission evidence of good cause why the orders should not take effect.

(3) A stipulation by a man that he is the father of a child may be used in proceedings involving child support, legal custody and physical placement.

77.6-12. *Reopening Default Judgment of Paternity.* A default judgment declaring a person to be the father of a child may be reopened upon petition for good cause shown, within three hundred and sixty five (365) days of the default judgment.

(a) Time for Filing Paternity Action. A petition to determine paternity may be filed at any time for the purpose of establishing the existence of a father and child relationship. If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth, unless the Commission shall determine that an action is necessary in order to preserve testimony.

77.6-13. *Hearings Closed.* Paternity proceedings shall be closed to any person other than those necessary to the action or proceeding.

77.6-14. *Records, Pending Proceedings.* Access to the record of any pending proceeding involving the paternity of the same child shall be allowed to all of the following:

- (a) The child's parents;
- (b) The parties to that proceeding and their attorneys or their authorized representatives;
- (c) If the child is the subject of a proceeding under ch. 48 (Children's Code) or 938 (Juvenile Justice Code) of Wisconsin Statute, all of the following:
 - (1) The court assigned to exercise jurisdiction under chs. 48 and 938 in which the proceeding is pending.
 - (2) The parties to the proceeding under ch. 48 or 938 and their attorneys.
 - (3) The person under s. 48.09 or 938.09 who represents the interests of the public in the proceeding under ch. 48 or 938.
 - (4) A guardian ad litem for the child and a guardian ad litem for the child's parent.
 - (5) Any governmental or social agency involved in the proceeding under ch. 48 or 938.

77.6-15. *Records, Past Proceedings.* A record of a past proceeding is open to public inspection if all of the following apply:

- (a) Paternity was established in the proceeding;
- (b) The record relates to a post-adjudication issue.

77.7. Paternity Established by Other Jurisdictions

77.7-1. Properly issued court and administrative orders, judgments or decrees of other Indian tribes, states, or federal agencies establishing paternity shall be given full faith and credit.

77.7-2. A foreign order is authenticated by reasonable proof that the document tendered to the Oneida Appeals Commission is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.

77.7-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Commission shall enforce it as a court order.

77.7-4. Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Commission may adopt some or all of its provisions as an original order of the Commission.

End.

Emergency Adopted - BC-06-30-08-D
Emergency Extended – BC-12-10-08-I
Permanently Adopted – BC-06-24-09-C
Amended – BC-02-24-10-F
Amended – BC-02-23-11-E